IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.377 OF 2005

Mohammed Haji Hasan .. Appellant

vs.

Municipal Corporation
of Gr. Bombay .. Respondent.

Shri Sakhardande i/b. Mrs.A.S.Malvankar, Advocate for the Appellant.

Mrs.Geeta Joglekar, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. After arguing the appeal for some time the Advocate appearing for the Appellant has tendered an affidavit. The affidavit is taken on record and marked ‘X’ for identification.

2. In the said affidavit of the Appellant it is stated as under:

> "That I have made an application for the regularisation of the suit premises on March 28, 2005 to the Dy. Municipal Commissioner a copy whereof is annexed hereto and marked as Exhibit "A".

That in pursuance of the directions of this Honourable Court, I hereby record the following undertaking to this Honourable Court.

(i) That I shall unconditionally withdraw the suit No.738 of 2004 filed by me in the City Civil Court.

(ii) That in the event of an adverse order being passed on my regularisation application I shall demolish the alleged first floor, within two weeks of the communication of the said order to me without prejudice to my right to challenge the same even after the demolition and to apply for re-construction of the demolished portion.

The undertaking mentioned above are accepted. In view of the said undertakings I pass the following order.

(i) The L.C.Suit No.738 of 2004 is dismissed as withdrawn.

(ii) In case the appellant makes

appropriate application through licensed Architect for regularisation of the offending structure referred to in the notice dated 9.2.2004 within a period of six weeks from today the same shall be decided by the concerned authority of the Respondent Corporation within a period of eight weeks from the date of the receipt of the application.

(iii) If the application for regularisation as aforesaid is made within the period of six weeks from today, both the parties will maintain status quo as of today for a period of 18 weeks from today.

(iv) If the application is not made within a period of 6 weeks, it will be open for the Respondents to take action against the Offending structure and the order of status quo will not operte.

(v) The concerned authority of the Respondent Corporation will serve a copy of the order passed oo the Application for Regularisation within one week from the date of passing of the order.

(vi) In case the order is adverse to the appellant, as per the undertaking given by him he will first remove the first floor and only thereafter will be entitled to challenge the order passed on the application for regularisation.

(vii) The Appeal from order is disposed of in above terms with no order as to costs.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)